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MAR 24 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: M. Cannata et al.)	DECISION ON PETITION TO
Application No. 09/590,099)	MAKE SPECIAL UNDER 37
Filed: June 9, 2000)	C.F.R. §1.59(b) AND M.P.E.P.
For: WEB-BASED GROUPWARE)	§724.05 TO EXPUNGE AND
SYSTEM)	RETURN DOCUMENTS

This is a decision on the petition under 37 CFR 1.59(b), filed February 11, 2005, to expunge information from the above identified application.

The petition is **DISMISSED**.

Petitioner requests that the information entitled Reply to Final Office Action and Declaration of John E. Macricken submitted on November 23, 2004, be expunged from the record because "the failure of its return may cause irreparable harm to the party in interest". Petitioner states that the abovementioned items should be deemed unintentionally submitted because they were not formally signed.

The relevant portion of M.P.E.P. §724.05 II which relates to this petition is reproduced below.

724.05 Petition To Expunge Information or Copy of Papers in Application File

II. INFORMATION UNINTENTIONALLY SUBMITTED IN APPLICATION

A petition to expunge information unintentionally submitted in an application (other than information forming part of the original disclosure) may be filed under 37 CFR 1.59(b), provided that:

(A) the Office can effect such return prior to the issuance of any patent on the application in issue;

(B) it is stated that the information submitted was *unintentionally submitted* and the failure to obtain its return *would cause* irreparable harm to the party who submitted the information or to the party in interest on whose

behalf the information was submitted;

(C) the information has not otherwise been made public;

(D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted;

(E) it is established to the satisfaction of the Commissioner that the information to be returned is not material information under 37 CFR 1.56; and

(F) the petition fee as set forth in 37 CFR 1.17(h) is included.

A request to return information that has not been clearly identified as information that may be later subject to such a request by marking and placement in a separate sealed envelope or container shall be treated on a case-by-case basis.

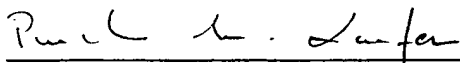
Petitioner's submission fails to meet the burden for establishing that the material should be expunged from the file on two counts:

(1) Petitioner does not state aver that failure to obtain its return would cause irreparable harm - instead Petitioner states that it *may* cause such harm. The speculative nature of this statement does not fulfill the requirement.

(2) More importantly, the file record clearly establishes that *the information was submitted intentionally*. Specifically, the information was submitted by Applicant for use in an Interview held with the Examiner of record on 7 December 2004. This submission was properly made of record by the Examiner by appending it to the Interview Summary as an Exhibit. Furthermore, the inclusion of this material in the record conforms with Interview practice as laid out in MPEP § 713.

The information in question has been determined by the undersigned to not to have been submitted unintentionally and to be material to the prosecution of the patent application. Accordingly, the Petition to have the material expunged is **DISMISSED**.

Any inquiries with respect to this decision may be directed to the undersigned.



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